15.54 hrs.

Title: Consideration of Delhi High Court (Amendment) Bill, 2003. (Bill Passed)

THE MINISTER OF LAW AND JUSTICE AND MINISTER OF COMMERCE AND INDUSTRY (SHRI ARUN JAITLEY): I beg to move:

> "That the Bill further to amend the Delhi High Court Act, 1966, be taken into consideration."

Madam Chairman, there is only a nominal amendment to the Delhi High Court Act, 1966 which has been proposed. In the law, the jurisdiction of the Delhi High Court, for the purposes of its pecuniary jurisdiction, relates to all cases where the monetary value is Rs.5 lakh or above.

15.55 hrs (Dr. Raghuvansh Prasad Singh *in the Chair*)

It is now proposed to substitute this jurisdiction of Rs. 5 lakhs with Rs. 20 lakhs. The result of this amendment would be cases upto Rs. 20 lakhs would be filed before the Subordinate Courts in Delhi and not before the Delhi High Court. The principal reason which has persuaded this amendment is that the Delhi High Court is already clogged with a large number of arrears and the pendency is more than 1.5 lakh cases and, as far as the courts of the District Judge and Additional District Judge are concerned, there are only 18,387 cases pending as on 1st March, 2003. Therefore, there is a possibility of much quicker disposal of cases so far as District Judges and Additional District Judges are concerned rather than the Delhi High Court. This was originally proposed or suggested by the Delhi High Court and a decision was taken on the administrative side by the High Court.

The State Assembly of Delhi had approved this particular law but, upon challenge on the basis of legislative jurisdiction, it was found that the legislative jurisdiction to amend this is just in Parliament and not in the Delhi Assembly and that is the reason why this Bill has been proposed before the Lok Sabha. The object is larger jurisdiction as far as Subordinate Court is concerned and this means much quicker and expeditious disposal of the cases.

With these few words, I propose to the hon. House that this Bill be adopted.

MR. CHAIRMAN : Motion moved:

> "That the Bill further to amend the Delhi High Court Act, 1966, be taken into consideration."

SHRI A.C. JOS (TRICHUR): Sir, I have a preliminary objection. Section 4 is given in the amended Act. It appears that Section 4 is a new Section. But where will it fit in? It is because Section 4 is not there in the original Act. I pointed it out to the hon. Minister that, if this Bill is passed, it would create a problem because in the original Act, Section 4 should be there. If it is not there, it should be an amended Act. So, Section 4 has come here. It is a new one.

MR. CHAIRMAN: You may take it up at the time of discussion.

SHRI A.C. JOS : This practice is wrong and the hon. Minister should clarify it. I am not opposing the Bill. What I am asking is the position of Section 4.

MR. CHAIRMAN: You may raise this point during discussion.

SHRIMATI MARGARET ALVA (CANARA): Mr. Chairman Sir, I stand up to support the Bill. Of course, there is nothing much in the Bill. It is only the question of jurisdiction financial limits which are being enhanced. As the Minister pointed out the reasons which, I suppose, are very justified. But I think, what we are looking at today is not just the question of jurisdiction of a court but the very functioning and the entire challenge to the judicial system which we are watching particularly these days with a judge being dragged in and out of the court, in the hands of the CBI, on bail or not on bail, etc. What has really come before the nation on the television screen is an enactment of the rot that has set in into our entire judicial processes starting from the lowest court in the remotest area to the highest bench in the country.

Sir, a case filed today, we are told, will probably be settled at the time of our great grandson, if at all it gets settled by then. The judiciary, the legal processes and the legal fora, if I may say so, have become playgrounds and the

fora of the rich and the super rich because no ordinary citizen can afford to go from court to court and reach the Supreme Court.

I also belonged to the legal fraternity but now, of course, without a brief as I do not practise nowadays. But I had practised in the Supreme Court. I know that clients come from our States. The charge of a senior lawyer for one appearance is Rs. 1 lakh in the Supreme Court. I do not know for how much the bills are made and for how much the receipts are given. That is the minimum for appearance and most often, it gets adjourned or postponed or the judge is not available.

16.00 hrs.

This has become the game of the rich and the super rich. Besides this, I do want to point out that our entire Constitution and the functioning of our democracy stand on three pillars − an elected Parliament, an independent Judiciary and, of course, a free Press. These are the foundations of a real vibrant democratic system. I must say that the independence of the Judiciary and its functioning has to come under some kind of scrutiny. I would say, there should be judicial reform.

The moment you criticise the Judiciary, you have to face contempt of court. I can say that what has happened in the Karnataka High Court is a disgrace, if I may say so, in the history of the Judiciary in this country.Judges were found, we are told, in a compromising position. When somebody wrote about it, they were summoned before the courts. Then they set up their own committee to inquire into the incident. Then, everybody is said to be absolutely innocent. Those who reported it or wrote about it were summoned for contempt of judges, who misbehaved somewhere and about which they wrote.

I will tell you today about an incident. That is why specifically today I stood up to speak. As Members of the Rajya Sabha, Shri Vayalar Ravi and I, during a discussion, criticised the Judiciary and pointed out certain lacunae. Both of us were issued contempt of court notices by the Allahabad High Court for having spoken under our rights inside Parliament. Then the Prime Minister had to take up the issue with the Chief Justice. We are under scrutiny by the judges even when we are in the Parliament. One of those judges is supposed to have said, "Why has she stopped practising. I wish she would come to the court and we would deal with her here". Thank God, I do not have to go to them! But on some day if I have to be in the dock, I do not know what will happen, with Shri Jaitley's legal processes.

All that I am saying is that today the judges have begun to believe that they are above the law and that they are above any norms. I dare say in this House that the Judiciary is more corrupt than bureaucracy or what we find in the political arena. But nobody talks about it. Benches are fixed; dates are fixed and manipulated through their own processes. I can tell you that judges are also fixed in many courts. We know that payments are made; we know where they are made and how they are made. We all are aware of it. But if we talk about it, we are in trouble. That is why nobody wants to talk about it. But lawyers do tell us how benches are fixed. They say, this is the pro-management judge, so do not fix it before him. this is pro-labour judge, so fix it before him and you will get a favourable judgement; this is the pro-tenant judge, so go before him. These are the types of ways in which the cases are manipulated.

I do want to say that it is high time the Executive decided who is running this country. We are told what kind of buses must run on the road. In a State, the State Government was told that every judge's car must have a red light. The court decides everything. When we were in Government, we were given an order, which I want to cite here, that in Delhi, no bungalow should be allotted to anybody till all the judges, whose list was given to us, were provided with bungalows. I was a Minister in the then Government. Only then could we give the bungalows to the Ministers or MPs or others who were waiting for bungalows. This was an order from the court. These kinds of orders are being given. If their salary has to be increased, they decide it. If something else has to be done, they decide it.

We went through a long process of impeachment in Parliament. I was Minister of Parliamentary Affairs then. I know what we went through trying to see that balance was maintained. Of course, there were many who said that you should have taught them a lesson once and for all and they would have behaved. I do not want to go into the kind of charges that were made. We were discussing about the size of carpets which were missing, we were discussing about how many cars were used for his daughter's wedding in Madras.

The cars were supposed to have been driven from Chandigarh to Chennai as if there were no lawyers in Chennai to provide cars to that Judge. But there were various things. So, we felt that they were not really something which required an impeachment. Hence, it was dropped. But I am saying today that there is a need for judicial reform. I must congratulate Shri Arun Jaitley that on a number of occasions, old Bills were amended. Of course, in-between he took a different *avatar* and disappeared. Now, he has re-appeared. He changes his *avatar* every six months! But, as the Law Minister, he took steps to see that a number of old Bills were amended, taken away when they

were considered redundant. I am glad that steps were taken to review a number of laws which had outlived the purpose. I would like the Government to look at the entire question of overhauling and restoring the credibility of the Judiciary in this country.

Sir, we are talking about an independent Judicial Commission. Somebody is talking about selection of Judges and so on. I have a couple of suggestions to make. I plead for them. One is that no Judge, appointed from the Bar, should serve in the State in which he was practising. He should go to the Bench outside the State and not work there. We have seen the sons and daughters or juniors of his own office appearing before the same Judge the day he becomes a Judge. उनके आफिस से केसेज़ उनके सामने आते हैं। His own juniors are appearing before him. I have known of a Chief Justice's official residence being used as an office by his own daughter as a practising lawyer in the very same court. The Chief Justice's house becomes the daughter's chamber as a practising lawyer. Can you expect them to be fair in dealing with the cases of the Chief Justice's daughter where the clients are met in the Chief Justice's own official house? These are the types of things which are happening today and we are talking about an independent Judiciary!

Next, even in the case of appointment of Judges, it is not the quality or the capacity which play a role but it is the political pulls and counter pulls which play a role. I am told that the hon. Minister was warned when Justice Mukherjee was to be appointed. Today, he is all over the news. Nobody looks at the background of the Judges. Nobody looks at what they have been up to. They are just appointed for various considerations. One is somebody's junior. One is somebody's son-in-law, and somebody's relation becomes a Judge. Then, the rot sets in. There is the question of who is to choose whom and on what basis it is to be done.

I would like to say in this connection that about adjournments, earlier, we had suggested in a whole range of measures. I do not know how much of them were accepted for judicial reform. They included the number of adjournments, limit on the hours of argument by lawyers, question of fixing of fees, etc. But I would certainly say that Tribunals, like the Administrative Tribunals and Tax Tribunals, have been set up which meant taking away the burden from the regular courts to the other fora. Of course, in Delhi, I think, till today the Family Courts have not been set up, thanks to the pressure of the influential lawyers of Shri Jaitley's fraternity in Delhi. They do not want the Family Courts because the Family Courts have debarred the lawyers. So, they say that they would not allow the Family Courts to function because they cannot appear before the courts; their cases are taken away. But the whole idea behind the Family Courts is to have an atmosphere in which the family problems, women's problems and certain issues could be sorted out without the wrangling between the lawyers and the fees to be paid. We, from the Committee on the Empowerment of Women, have been to almost all the States. We have visited the Family Courts with and without notice. The lawyers are appearing in all the Family Courts in the country. In the Mumbai High Court, they have been given the lawyers chambers in the premises of the Family Courts while the social workers, who are supposed to be the counsellors, have no room to sit. There are other places where, till today, rules notifying the appointment of the counsellors have not been issued by the State High Courts. There are still other places where the counsellors in the Family Courts are paid Rs.30 per case.

A sum of Rs.30 is not even the minimum wage for a labourer in the field and they are supposed to do counselling for women. We have discussed the question of free legal aid repeatedly. As somebody said recently in an interview, those lawyers take up free legal aid who have no other cases to take up. So, it is all bungled. There is hardly any help for poor women and others who want legal aid. The lawyers, who do not have any other work, get experience at the cost of the Free Legal Aid Cell and get paid by the court. What is the result of that for the poor people is another question. There are problems with that.

I would certainly say that the time has come when, as a legislative body, we should draw a line stating what are the areas for judicial review and what are not. From CNG buses, drinking water, to the cleaning of river, there are judgements. Today, I saw a Judgement saying that within three months something is to be done. Everyday the Government is being told what to do and what not to do. I can quote one example. I can speak here because I cannot speak outside, otherwise I will be charged with contempt. There were oral orders given in the Supreme Court that so and so person should be appointed, otherwise the Chief Secretary and the Chief Minister would have to pay the price and this came as a warning. It was not an order in writing but it was an oral order. It was a threat to the Government and my Government had replaced that officer and appointed the one whom the Judge from the Bench said that 'if this is not done, you will be hauled up'. So, on oral orders a man had been released and another one had been appointed. Yesterday, in my own constituency, the CAT said 'transfer a Chief Engineer in the *Taluk Panchayat* and ordered them to appoint so and so'. So, this Chief Engineer is to be relieved and the man that the CAT decides must be appointed. लेकिन आज यह क्या हो रहा है? When I was Minister for Personnel, I was faced with orders from the Tribunals and even from a High Court telling us to change the cadre of an IAS trainee who was selected. Cadre selection is the prerogative of the Government of India, Ministry of Personnel. I refused to accept it. I was told that यह तो जूडीशियल ऑर्डर है। I went and met the Chief Justice of India. I told him that we are in trouble. We cannot run the cadre. We filed an appeal and luckily for us the order was struck down and it was upheld that the prerogative of the Ministry of Personnel for cadre allotment cannot be taken away. If he is somebody's son-in-law, I

must give him the cadre of his choice. Is this how the Government of India works? Are the courts going to decide the rights of an elected democratic system in which you have elected the Government? The court issued an Order for the arrest of a Speaker. This happened when we were in Government. It was in one of the North-Eastern States.

SHRI ARUN JAITLEY: It was in Manipur.

SHRIMATI MARGARET ALVA (CANARA): Yes, in Manipur. That day I pleaded as I plead today. "If we do not stand up today, our future generations will blame us for having submitted to the tyranny of the Judiciary." We did nothing at that time and the Speaker was arrested and taken out on the orders of the court. This was a total violation of the supremacy of the legislature and, therefore, I say that unless we are strong enough to stand up on issues, irrespective of party and across party lines, and reassert the primacy of the Houses of Parliament, we cannot reform the system. We make the laws. If they are unconstitutional or if they have violated the Constitution, let them strike them down, but they cannot tell whose cars will have red lights. Why is it that only Delhi needs CNG buses? Is it because the Supreme Court sits here? What about CNG buses for the rest of the people of this country? Can they die? Can Mumbai, Chennai and Bangalore die without CNG but Delhi must have CNG because the Supreme Court sits here?

What is this? Do the rest of them have no right to clean air? I do not understand how and why we are bowing to every single diktat that is being thrown at us. In this Amendment, the hon. Minister is raising the limit of original civil jurisdiction of the lower Court. I feel that we may also have to fix some rates which have to be paid here and there. Besides fees, we may have to put a limit on the bribes to be paid in the lower courts, middle courts and higher courts. वह भी लगा दीजिए तब तो कुछ ठीक हो जाएगा, रेगुलराइज़ हो जाएगा। But I would like to say that the time has come for Parliament and the Government to take all into confidence and look at the functioning of our judicial system and ensure that justice is truly done because 'justice delayed is justice denied.' The way we are going now, it seems there is no justice done to the common people in the law courts. It is a maze. All kinds of wrong things are happening. The wrong people get convicted, the wrong people get away and unfortunately, we are sitting back as spectators and hardly ever reacting because we are afraid of what the Judiciary will do tomorrow.

I think this terror has to end. While I support this Bill, I think the time has come for us to look at this in a very cool manner. I have brought these issues and spoken here. I know I am speaking on behalf of hundreds and hundreds of people who feel this way, but cannot speak outside because they will be hauled up before the courts. But I can say this, at least, as a Member of Parliament, on the floor of this House since I am protected under the Rules and I thank you for the time given to me.

श्री प्रभुनाथ सिंह (महाराजगंज, बिहार) : सभापति जी, हमारा एक निवेदन है। हम सुन रहे हैं कि कल महिला आरक्षण से संबंधित संविधान संशोधन विधेयक आ रहा है। â€¦ (व्यवधान)

सभापति महोदय : वह विाय अभी हमारे सामने नहीं है। अभी बिल पर चर्चा हो रही है।

श्री प्रभुनाथ सिंह : हम व्यवस्था का प्रश्न उठा रहे हैं, हमारी बात तो सुन लीजिए। â€¦ (व्यवधान)

श्री रामजीलाल सुमन : सभापति जी, यह बहुत गंभीर मामला है। â€¦ (व्यवधान)

श्री प्रभुनाथ सिंह : हम निवेदन कर रहे हैं कि इतना सीरियस बिल है कि बिना 48 घंटे की सूचना सदस्यों को दिये सदन में यह बिल लाना मुनासिब नहीं है। आप आसन पर बैठे हैं। कम से कम 48 घंटे की सूचना तो सदन को होनी चाहिए, उसके बाद सदन में बिल लाना चाहिए, यही हमारी विनती है।

सभापति महोदय : वह विाय अभी सामने नहीं है। अभी दिल्ली हाई कोर्ट अमैन्डमैंट बिल पर चर्चा चल रही है।

श्री रामजीलाल सुमन : अध्यक्ष महोदय, यह बहुत गंभीर मामला है। â€¦ (व्यवधान)

श्री प्रभुनाथ सिंह : आप विाय की गंभीरता को समझिये।

सभापति महोदय : वह विाय अभी हमारे सामने नहीं है।

श्री प्रभुनाथ सिंह : हम आपके सामने रख रहे हैं, उसे ही विाय मान लीजिए। कल सरकार कह रही थी कि शिवराज जी के मौखिक मोशन को मान लीजिए। कल मौखिक मोशन लेने के लिए तैयार थे। हम जब मौखिक कह रहे हैं तो आप कहते हैं कि विाय नहीं है।

श्रीमती मार्ग्रेट आल्वा : प्रभुनाथ जी, आप ऐसे ही बोलते रहेंगे तो हमें भी न्याय के लिए दिल्ली हाई कोर्ट में जाना पड़ेगा। â€¦ (व्यवधान) चार साल का नोटिस है, चार साल से पैन्डिंग है, इस हाउस में इंट्रोड्यूस हो चुका है और आप 48 घंटे की बात कर रहे हैं। â€¦ (व्यवधान)

श्री प्रभुनाथ सिंह : आप प्रतियोगिता में आई हैं, आरक्षण से नहीं आई हैं। â€¦ (व्यवधान)

श्रीमती मार्ग्रेट आल्वा : मुलायम जी भी मान रहे हैं कि इसे तो करना ही है। वह भी हमारे साथ हैं, तो आप क्यों ऑब्जैक्ट कर रहे हैं? â€¦ (व्यवधान)

श्री मुलायम सिंह यादव (सम्भल) : इतना अच्छा भााण देती हैं और ऐसी बात कर रही हैं?â€¦ (व्यवधान)

श्री प्रभुनाथ सिंह : सदन को विश्वास में लेना चाहिए और विश्वास में लेकर ही यह बिल लाना चाहिए। इतनी जल्दी क्या है? â€¦ (व्यवधान)

श्री रामजीलाल सुमन : यह बहुत गंभीर मामला है। पूरे सदन को विश्वास में लेकर ही यह बिल लाना चाहिए। â€¦ (व्यवधान)

सभापति महोदय : अभा वहे हवा में है।

श्री प्रभुनाथ सिंह : हवा का सवाल नहीं है। बिना सदन को विश्वास में लिये हुए यह बिल लाना न्यायसंगत नहीं है। â€¦ (व्यवधान)

सभापति महोदय : अभी हाई कोर्ट वाले बिल पर बहस हो रही है। वह विाय सामने कहां है?

श्री प्रभुनाथ सिंह : सभापति जी, यह बहुत गंभीर विाय है। आप इसे ही विाय में रख लीजिए। â€¦ (व्यवधान)

श्री रामजीलाल सुमन : यह बहुत सैन्सिटिव इश्यू है। â€¦ (व्यवधान)

सभापति महोदय : आज 4.30 बजे बीएसी की बैठक होगी।

...(व्यवधान)

SHRI VARKALA RADHAKRISHNAN (CHIRAYINKIL): Sir, I support the Bill. Now, the Bill, as it is, is a very simple one. The purpose is to enhance the pecuniary jurisdiction.

In the normal course, nobody will object to it because in the changed situation, the court fee will have to be enhanced and it so happened that it has to be dealt with by the Lok Sabha due to some legal difficulties. Normally, it would have come before the Delhi Vidhan Sabha and they could have passed the legislation. But now, some very serious questions have come up before the House.

Madam Alva has raised certain important issues. We all know that the Judiciary is also in a crisis. Two days back I had the occasion to read a news item. A lawyer was practising before the Kerala High Court and he was a good lawyer. After some time, he was elevated to the Bench. He became a judge of that High Court. When he was a lawyer, he was appearing for a particular case - I do not want to name those matters. He was appearing in a case for a particular party when he was a lawyer in that court. Afterwards when he was elevated to the High Court Bench, the very same case came before him in an appeal in another context. The judge did not hesitate to dispose it of. Normally, he ought to have transferred the case. He was the advocate who was appearing for one party in a case at that time and in the normal course he ought to have transferred it to some other Bench. He did not do it. He disposed of the case and gave a judgement in favour of the party for whom he was appearing as a lawyer previously. This happened in our land, in our country.

There is a specific Supreme Court ruling that the advocate, who is appearing for a particular case, should not hear the case when it comes to him as a judge. But the hon. Judge did not find any hesitation in disposing of the case in favour of the party for whom he was appearing when he was a lawyer. This has happened.

The Kerala High Court is one of the best High Courts in India. They have a tradition, they have an integrity and all those things are there in favour of the court. That judge is now a Chief Justice of a particular High Court. This appeared two days before in a Press report in *The Pioneer* newspaper giving all these details. So far, to my knowledge, nothing has happened. Is it proper in the normal course? So, many things are taken biased in the Judiciary.

In that Paper, in another context, in another part of the Paper, I happened to read that a judge, who has retired from the High Court was arrested by the CBI in a corruption case. The very same judge. In another news item, a judge of the Delhi High Court had resigned. The reason given was the illness of his wife. But as a matter of fact,

subsequently, it was brought out that he was involved in a corruption case. A case of crime was registered against him. He was taken into custody. He was questioned by the CBI and he was brought before a judge.

This has also happened. So, in one case, a judge who appeared for a particular party as a lawyer is hearing the case in an appeal. In another case, a judge who has recently retired is arrested by the Police for questioning in a particular case. This is what is happening in our country. That is why, I submit that Judiciary is also in a crisis. We want an independent Judiciary. We want an honest Judiciary. It is highly essential for our democratic life that Judiciary must be impartial. It must have integrity, and no influence should be exerted on Judiciary. But things are taking place otherwise. So many instances were referred to by Shrimati Margaret Alva. As a lawyer, she knows. I have certain knowledge. What is the remedy for this?

Indian Judiciary is given a blanket protection. Is it necessary in a democratic State to give blanket protection in the form of a Contempt of Court Act? Nobody can speak a word against a judge outside, otherwise he will be booked. This Contempt of Court Act was passed or came into effect when India was a Colony. When the Britishers were administering India as a Colony, they had given a statute, that is, the present Contempt of Court Act. Now, even after 50 years of our experience as a democratic Republic, we have not changed the Contempt of Court Act. It is still there. It has not been given any change at all. Nothing can be said against a judge. Nothing can be spoken against a judge. Nothing can be written against a judge or even a fair criticism is not permissible. And that is the present law of our land. So, until and unless this law is changed, the judges may go wrong. In a democratic set up, the judges are amenable to criticism. I do not say that they must be put to personal criticism but the people must have right to criticise the merits and demerits of the case. The conduct of a judge must be put to criticism. Until and unless we do this, we would not be able to have an independent and a fair Judiciary.

Now, the Supreme Court judges have instituted in-house proceedings, which is more or less a farce. Whenever any judge is erring, it would be looked into by a Committee of Judges appointed by the Chief Justice. This is the procedure. Will it do any good? In-house proceedings will be of no avail in dealing with the cases in which judges are involved. So, I would humbly request the hon. Law Minister to immediately take steps to have the Contempt of Court Act amended. Why should there be a delay? It is much more important than any other amendment because this law is there for more than 50 years, and India became Independent 53 years before.

To speak of pecuniary jurisdiction is of no use. It is said that the number of cases pending before the courts is high and it would get reduced by this amendment. I do not think so. Accumulation of case files is one of the evils of our judicial system. There are about three crore cases pending before the courts without being decided. A poor man in the street is finding it difficult to get justice. India is one of the countries in the world having the costliest system of Judiciary.

Our judicial system is very costly. It is costlier than in any other country. We could not reduce the cost because we always increase it. We even pass legislation to increase the court fees, stamp duty and all those things but no effort is made to decrease the number of accumulated cases. That is the present situation and that is the irony of fate in our country. Nobody is taking any step to reduce the number of cases and cases are going on accumulating.

Even the Judge who was arrested the other day did not give a judgement even after six months. Many of the Judges hear cases but they would not write the judgement. Judges would not give a judgement at the appropriate time. So, there must be some statutory provision compelling Judges to deliver judgements within two or three days after the hearings are completed. After hearing the case, they would take the file home and keep it there. When the CBI raided the house of the Judge who was arrested the other day in Delhi, they could get files where the Judge did not write judgements for long. Even if some judgements were written, they were on the basis of money that was received. That was the police report. So, they would not write the judgement at the proper time. The judgement would never be declared in the open court. They would simply say: 'The judgement would follow.' This is the position in our country.

We all speak of judicial accountability but there is no statute to ensure that. Even in today's newspaper I could read that a Judicial Commission would be appointed. But there is some difference of opinion with the Law Ministry and in the Law Ministry also there is some difference of opinion on what powers are to be given, whether it should be independent, whether it should be appointed by the Chief Justice or in consultation with the Prime Minister and so on. These are matters of dispute about which I would not go into detail. But one thing is certain.

There must be a law for judicial accountability and the National Judicial Commission should come into existence, making the Judiciary independent and making the Judiciary liable to people; and the Contempt of Court Act should be amended for lawful criticism against the Judiciary also.

With these words, I support the Amendment Bill.

श्री चन्द्रनाथ सिंह (मछलीशहर) : सभापति महोदय, उच्च न्यायालय संशोधन विधेयक, जो सरकार द्वारा लाया गया है, इसमें सरकार ने उद्देश्य और कारण बताया है कि हाई कोर्ट में बहुत से मामले लंबित हैं जिनका जल्दी निपटारा हो सकता है। मैं नहीं समझता कि सरकार की इस सोच से कोई भला होने वाला है। जब देश आजाद नही हुआ था, तब लोगों की और विशेा रूप से महात्मा गांधी की मंशा थी कि गरीबों को न्याय मिले। इसलिए उन्होंने ग्राम, न्याय पंचायत बनाई ताकि न्याय पंचायत स्तर पर मामलों का निपटारा हो सके, लेकिन भारतीय प्रजातंत्र में ग्राम पंचायत और न्याय पंचायत बिल्कुल फेल हो गए। एक भी मामले का उनसे निपटारा नहीं हो पा रहा है। आज मामला यह नहीं है कि हाई कोर्ट में बीस लाख रूपए के ऊपर के केसेस लाए जाएं जिससे हाईकोर्ट में मुकद्दमे कम आएं । मैं समझता हुं कि इससे 95 प्रतिशत जनता को लाभ नहीं होगा क्योंकि हमारे देश में बहुत गरीब लोग हैं, न्याय बहुत महंगा है, महंगे वकील हैं, विधि मंत्री जी बहुत ही महंगे वकील हैं, गरीब व्यक्ति उन तक अपनी फरियाद लेकर नहीं पहुंच सकता कि आप हमारा केस लड़ लीजिए। जो गरीब मुकदमा नहीं लड़ सकता, जिसके पास केस लड़ने के लिए पैसा नहीं है, उसको इस देश में न्याय नहीं मिलने वाला है। आज आजादी के पचपन साल बाद भी उनको न्याय नहीं मिल रहा है।

न्याय उसी के लिए है जिसके पास धन है, जिसके पास पैसा है। पांच साल से एनडीए सरकार की इस बारे में क्या सोच है ? यह मैं जानना चाहता हूं। गरीब व्यक्ति जिसके पास वकील को फीस देने के लिए पैसा नहीं है, किराये के लिए पैसा नहीं है, जिसका सब कुछ लूट लिया जाए, जिसकी जमीन का विवाद हो और जिसको गलत ढंग से बंद कर दिया जाए, ऐसा गरीब व्यक्ति किसी भी न्यायालय में फरियाद नहीं कर सकता है।

आज इस देश में न्याय व्यवस्था चौपट हो चुकी है। मैं आपके माध्यम से सदन को बताना चाहता हूं कि छोटी अदालतें जो होती हैं, वकील साहब वहां जाते हैं, जज साहब का आज केस करने का मूड नहीं है, जज साहब आज बैठेंगे नहीं और वहां अन्हदर चैम्बबर में जज साहब बैठे हुए हैं। वकील साहब पेशकार को मनचाही तारीख देने के लिए सौ रुपया दे रहे हैं और जज साहब इतना करते हैं कि मुंह दूसरी तरफ कर लेते हैं और वकील साहब रुपया दे देते हैं। जब शाम को रुपया इकट्ठा होता है तो पेशकार जज साहब के यहां पहुंचाते हैं। हमने अपनी आंखों से ये चीजें देखी हुई हैं। इसलिए मैं इस मुद्दे को यहां सदन में उठाना चाहता हूं कि क्या इस व्यवस्था को भी मंत्री जी रोकने की कोशिश करेंगे ताकि गरीब आदमी भी न्याय पा सके ?

इस देश में देखा जाए कि लाखों-लाखों मामले ऐसे हैं जो बीस-बीस साल से चल रहे हैं। उसके कई कारण हैं। मैं माननीय मंत्री जी का ध्यान इस ओर आकर्ति करना चाहता हूं तथा सुझाव भी देना चाहता हूं कि कई ऐसे कारणों के कारण ही आज फैसले नहीं हो पा रहे हैं। सबसे बड़ी चीज यह है कि अदालतों में आम चीज हो गई है कि हड़तालें हो जाती हैं। ये हड़तालें क्यों होती हैं? मेरे प्रतापगढ़ जिले में 19 तारीख को एक अधिकारी ने वकीलों के ऊपर पिस्तोल तानकर जान से मारने की धमकी दे दी और वकीलो की तरफ से कोई एफआईआर दर्ज नहीं हुई। तब से वकील हडताल पर है और अदालतें बंद पड़ी हैं। इसी तरह से हर जिले में है। उत्तर प्रदेश में सुश्री मायावती जी की सरकार में बीजेपी और बीएसपी की सरकार में कितनी अदालतें चल रही हैं? अगर दो-दो महीने तक हड़तालें चलेंगी तो मुवक्किल अदालत तक आएगा और उसको तारीख मिल जाएगी। दस-पांच दिन के बाद वह फिर आएगा और फिर लौट जाएगा। इसलिए सरकार को इस बारे में भी सोचना चाहिए। अदालतें बैठनी चाहिए। कभी प्रतापगढ़, कभी लखनऊ, इलाहाबाद और फरुख्खाबाद में हड़ताल हो रही हैं। केसेज जब निपटेंगे नहीं, जजेज बैठेंगे नहीं और जजों के पद खाली रहेंगे तो बीस-पच्चीस साल तक मुकदमे लम्बित पड़े रहेंगे। बहुत से केसेज में ऐसा हुआ है कि बाप भी लड़ा, उसके बाद बेटा भी लड़ा और उसके बाद उसका पुत्र भी उसी मुकदमे को लड़ रहा है तथा वह भी एक ही अदालत में लड़ रहा है। हाइकोर्ट में आने की जरुरत ही नहीं है। यह सरकार बहुत से बिल लेकर आ रही हैं। मंत्री जी बहुत विद्वान व्यक्ति हैं, उनकी बहुत ही अच्छी सोच है तथा वह विधि के विशेाज्ञ भी हैं लेकिन वह यह भी सोचने की कृपा करें कि वह इस विधेयक को ला रहे हैं, यह विधेयक भी ठीक है लेकिन मैं यह जानना चाहता हूं कि क्या सरकार भी इस बारे में कुछ सोच रही है कि मुकदमे की कोई सीमा होना चाहिए कि पांच साल, तीन साल में व्यक्ति को न्याय मिल जाए। लोग अदालत जाते-जाते थक जाते हैं और मुकदमा छोड़ देते हैं। जितने की जमीन होती है, उससे कहीं ज्यादा खर्च हो जाता है। जिस व्यक्ति के पास पैसा नहीं है, क्या उसको अदालत या सरकार कोई सहायता देगी? लगातार सरकार कोर्ट फीस बढ़ाती जा रही है। कोई मुकदमा दायर करना है तो दो हजार रुपये की फीस देनी पड़ेगी। जिसके पास दो हजार रुपया ही नहीं है, वह कहां से देगा ? शायद सरकार को मालूम नहीं है कि इस देश में बहुत से लोग ऐसे हैं जिनको खाने को रोटी, रहने को मकान और पहनने के लिए कपड़ा नहीं है। ऐसे लोग भी कई बार कई ऐसे मामलों में फंस जाते हैं। उन्हें कभी-कभी जेल भी देखने को मिलती है । प्रतापगढ की जेल में बच्चा साइकिल की चोरी में बंद हो गया है, उसका मुकदमा लडने वाला कोई नही है । ऐसे कितने बच्चे 7-8 साल से जेल में बंद हैं।

उनकी पैरोकारी करने वाला कोई नहीं है। मैं चाहता हूं कि कोर्ट्स की संख्या बढ़ाई जाए, अदालतों की संख्या बढ़ानी चाहिए। सिर्फ यह नहीं होना चाहिए कि पांच लाख रूपए से बढ़ा कर 20 लाख रूपए की सीमा कर दें। जितने जजों के पद खाली हैं, उनको भरा जाना चाहिए। एक निर्धारित समय सीमा रखनी चाहिए कि चाहे रेवेन्यू का मामला हो, चाहे सिविल का मामला हो या क्रिमिनल केस हो, उनका एक निश्चित अवधि में फैसला हो जाना चाहिए। सरकार को इस बारे में भी सोचना चाहिए कि न्याय महंगा न हो। कोर्ट फीस भी महंगी। एक आदमी चार साल लड़ते-लड़ते टूट जाता है, सब कुछ बेच देता है। आज यह आम धारणा है कि जो व्यक्ति अदालत में जाता है वह अपने घर का सामान, गहने इत्यादि सब बेच देता है, तब भी उसको न्याय नहीं मिलता। अगर इन सबका निराकरण इस विधेयक में नहीं है, तो इस विधेयक से कोई फायदा होने वाला नहीं है। मैं यहां तक कहता हूं कि वह सरकार निकम्मी है, जो न्याय नहीं दे सकती। जो सरकार गरीबों को, आम लोगों को न्याय देगी, वही अच्छी सरकार मानी जाएगी। इस सरकार ने पांच वर्षों में गरीबों को न्याय देने की कोई व्यवस्था नहीं की है। इसलिए मैं इस सरकार की निंदा करता हूं। विधि मंत्री जी विद्वान आदमी हैं, मैं उनसे कहना चाहता हूं कि वह एक ऐसा बिल लाएं, जिससे गरीबों को न्याय मिल सके, न्याय आसान, सुलभ और सस्ता हो। लेकिन अभी तक वर्तमान सरकार ने इस बारे में सोचा नहीं है। अगर मंत्री जी इस बारे में सोचेंगे तो मैं उनको बधाई दूंगा।

SHRI P.H. PANDIAN (TIRUNELVELI): Thank you Mr. Chairman.

Sir, I rise to support this Bill. There was a debate about the appointment of judges of the High Courts. It is crystal clear under article 217 that every judge of the High Court shall be appointed by the President in consultation with the Chief Justice of India, the Governor of the State and the Chief Justice of the High Court. Wherever the word 'Governor of the State' is there in the Constitution, we can read it as 'Council of Ministers'. The Governor has no independent discretion at all, except under article 163.

The judgement passed by the Supreme Court of India in Advocates-on-record Association case, taking away this right of appointment of judges by the Executive from the hands of the Executive, has not yet been amended in the Constitution. Article 141 cannot override this article 217. Under article 141 of the Constitution, the law declared by the Supreme Court shall be binding on all courts within the territory of India − not on the Constitution, not on Parliament and not on any Government. So, till date, this provision of article 217 has not been amended by Parliament. So, the right of appointment, the primacy of the appointment of a judge of the High Court by the Executive has been taken away or removed. Consultation with the Executive has been given a go-by. Now, by virtue of the judgement in the Advocates-on-record Association case, there is a collegium of five judges, with the Chief Justice of India as head, who will forward the names to the President. So also, there is a collegium in the High

Courts, with its Chief Justice as head, and they will directly forward the names to the Chief Justice of India for approval. So, the Governor of the State, the Council of Ministers, the Chief Minister and the Government have no say in the appointment of judges.

When the primacy is taken away in the matter of appointment of judges of the High Court, the background of the judges is not known to the Chief Justice of India who is sitting in Delhi. Only the Government in that particular State will be able to collect information and they will know who is the right person, who is the best person and who is best qualified to be forwarded for appointment. So, it is high time that article 217 of the Constitution needs an amendment. The hon. Minister of Law and Justice, who is a lawyer, will be able to appreciate this point.

Sir, as far as criticism is concerned, anybody can criticise the judgement of a judge. When there is the question of attacking personally the judge, the contempt of court comes in. You can attack the judgement saying that it is foolish, it has no substance and it is null and void, and that he has not applied his mind. We the lawyers take these grounds of appeal in every appeal saying that the judgement is perverse. It is not contempt of court. So, when a matter relating to personal attack on a judge comes, the question of contempt comes in.

As far as appointment of judges is concerned, in USA, the whole Parliament debates the names. There is a debate about forwarding of names. If the Congress refuses to forward a name in USA, that person cannot be appointed as a judge. There is a judicial committee also. Similarly, the name of the highest law officer is also routed for appointment through the House of Representatives. Now, when the consultation has been taken away, when the power of the State Government has been taken away, the selection of individuals for appointment as judges is done by a collegium. In that way, when the appointments were made on the basis of recommendation of Chief Ministers of States, they selected the best people, the cream, because they knew their background and took into consideration the social philosophy. One Member was pointing out that one judge is pro-labour judge, pro-tenant judge, etc. All that depends upon social background. So, social background should be the criteria for appointment of judges and also the social philosophy.

SHRI S. BANGARAPPA (SHIMOGA): After this change, is there any improvement?

SHRI P.H. PANDIAN : No.

As far as the Supreme Court is concerned, only 24,000 cases are pending. I think, there are 24 or 25 judges. So, each judge will have only 1,000 cases pending.

SHRI ARUN JAITLEY: There are 27 judges in all. This figure had come down to 21,000. The average filing in the Supreme Court was about 32,000 to 33,000 and that was also the disposal. So, the arrears' position was being maintained, but now it is gradually going up to about 26,000 because last year about 42,000 cases have been filed. The filing has substantially increased and we have to think of a strategy to cope up with it *vis-à-vis* judges' strength in that regard.

SHRI P.H. PANDIAN : Filing has increased, but the appeals are dismissed at the doorstep. SLPs will be dismissed in one minute. In a case of murder, wherein about seven appellants had preferred an SLP, it was dismissed in one minute. It was not entertained. When an appeal relating to life was not entertained in the Supreme Court, why should there be the Supreme Court in India? To decide an appeal relating to life, there should be the highest court in the land. The late Chief Justice of India, Shri Gajendragadkar had said "If there was a court above the Supreme Court, half of the judgements would have been reversed." That is different. Every citizen should have the right to move the Supreme Court as a matter of right. It should not be a matter of favour or a matter of discretion. So, in that way, the Law Minister may look into this aspect of article 217.

He said that about 26,000 cases or 27,000 cases are pending. Each judge will have only 1,000 cases. Lawyers have 1,000 cases in hand, and the judge of the Indian Supreme Court will have 1,000 cases in hand for his entire term. Every year, he will dispose of the cases.

In that way, the cream, the best brain should be drawn from the bar. For that, the Chief Minister, the Prime Minister and the Law Minister should have primacy. The Executive should have primacy. Now, they do not have a say. They can tell them indirectly. They must have a constitutional say in the matter to the Supreme Court.

You should be in a position to say, 'Look! You are all our candidates'. Judges were packed to the Supreme Court in USA overnight. That is how the packing of judges was followed. Now, there is no packing of judges.

This provision of article 217, cannot be overwritten by article 141. Will the Law Minister say that article 141 can overwrite article 217? A law declared by the Supreme Court shall be binding on all courts in India. Can it be overwritten by article 217, which says that the Governors in States - that is the Council of Ministers − should be consulted? Can the provision of Executive consultation be taken away by a judgement? Suppose they say in a judgement that Parliament should meet only for one month; can we take that up? This is a Constitutional provision.

This Constitutional provision cannot be altered; it can be interpreted. Under the guise of interpretation, the Constitutional provisions cannot be altered by virtue of article 141. We are experiencing this in so many ways in different Governments.

As far as conduct is concerned, I will cite an example. There was a friend of mine who was a High Court judge. He later became the Chief Justice of the High Court. He was to come to the Supreme Court as a judge. He was at number one in the seniority list. However, his name was not preferred just because he could become the Chief Justice of India, if he came to Supreme Court immediately. So, to scuttle his progress, they selected the junior persons, whose names were below him in the list, and appointed those people as Supreme Court judges first. When a person is competent to be a High Court Judge, when a High Court judge is competent to be the Chief Justice of a High Court, how is it that he cannot be competent to be a judge of the Supreme Court of India? It is high time there is mutual discussion between the Chief Justice and the Government in order to evolve, to overcome the 'Advocate on Records Association' case. That case is not a Constitutional provision. It cannot remove the Constitutional power of the Executive.

I will come to article 145. Shri Sahu is sitting here. We deliberated article 145 in the Standing Committee on Home Affairs. I wish to read that provision out. It says:

> "Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including â€¦ the grant of bail, the grant of stay â€¦ "

It is all there. But did the Supreme Court ever frame rules with the approval of the President so far? Did the Supreme Court frame rules subject to the provisions of any law made by Parliament? We have not made any law so far. Have we applied our mind to this article 145 till date since the beginning of this Constitution? The Supreme Court frames its own rules. As per the doctrine of 'Indoor Management', they frame their own rules. This article 145 has a meaning. ...(*Interruptions*) We will tell them now? All right. Thank you. Parliamentary control should be there.

We have the Parliament, the seat of the President and the seat of the Supreme Court, all the three located in Delhi. When we went to South Africa, we found that the three capitals were different. There was a Judicial capital, there was a Parliamentary capital and there was an Administrative capital there. In our country, all the three capitals are situated in Delhi. There was an International Bar Association Conference held in Vigyan Bhavan in 1984.

In a Committee, the present Attorney-General had said that 'the Parliament, the administrative seat of the Central Government is in Delhi. That is why, the Judges talk too much, mix too much with the politicians, with the Ministers. So, the Capital should be taken away.' Sir, he had advised in this way to the Government in the Association's meeting at Vigyan Bhawan.

I would say that all the constitutional matters should be looked into seriously. In a Bill like this, we would be able to say it. About the functioning of the courts, I would not elaborate more, because much has already been said by many hon. speakers.

With these few words, I support this Bill.

SHRI A.C. JOS (TRICHUR): Mr. Chairman, Sir, I also want to support this Bill, in general.

At the outset, as I have pointed out earlier also, this Amendment is a defective Amendment. Clauses 1,2 and 3 are enumerated here. Clause 4 has also been enumerated. But I do not know how section 4 will fit into the original Act. There is a Section 4 in the Original Act as well. After this Amendment Bill is passed, which we are going to do today, there will be two Sections 4. I do not understand the scheme of the things. I have never heard of such a position. And, the explanation given is that this is only a temporary thing. Even if it is a temporary thing, how would two Sections 4 be there? So, my submission to the hon. Law Minister is to kindly check it up. I do not agree with him that this will ultimately get absorbed just like sutures. At least, for some time, there would be two sections.

So, my preliminary objection, which I am pointing out, is that this Amendment is a defective Amendment. On this, more deliberation is necessary. Otherwise, it will not serve the purpose.

Sir, another point is that even Rs. 25 lakh as the pecuniary limit in the present set-up is not sufficient. They are not raising it everyday. So, it can be made either Rs. 35 lakh, Rs. 40 lakh or Rs. 50 lakh. Same is the case with the other States also. Everyday, the States are also raising this pecuniary limit of Munsif courts, Sub courts, District courts, etc. So, my submission to the hon. Law Minister is that there should be some mechanism to be found out by

which the pecuniary limits are regularly enhanced. I do not know how to do it, but it should be given a serious thought. Even now, small courts are there, Munsiff courts are there, Sub courts are there. All of them have set the pecuniary limits. But because of the eroding of the value of the money, the amount is going up. That is one of the main reasons why a large number of cases are pending.

So, they can raise this limit in the Munsif courts. Many of the cases can be transferred to the Munsif courts and disposed of. It is not only in the case of the Delhi High Court. I know that the subject comes under the purview of the State List.

So, they can raise this limit in the Munsif courts. Many of the cases can be transferred to the Munsif courts and disposed of. It is not only in the case of the Delhi High Court. I know that the subject comes under the purview of the State List.

17.00 hrs.

It can be amended only by the State. But that has to be viewed seriously.

Another thing which hon. Shri Pandian has mentioned is about the appointment of judges. My submission to the hon. Law Minister − who himself is an eminent lawyer − has to think very seriously about it.

Sir, a situation has arisen. Now, the appointments have totally been taken over by the collegium of judges of the Supreme Court and the High Courts. The Supreme Court interprets the law. I would request the Minister to refer this matter to the Supreme Court alone. This article 217 is not subservient to article 141. It is because the law passed by the Parliament is applicable to the Courts in India. So, the power of appointments of judges is totally vested with the President. That means, the Executive is advising him. It is very, very clear. I do not know as to why every judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State; and in case of the appointment of a judge other than the Chief Justice, the Chief Justice of the High Court appoints. Like that it goes. So, how can the collegium take over the powers of the President under the Constitution? In a country like India where we need many reservations, communal balance, social equity, all these things are to be considered. They can be considered only by the Executive. So, my request to the hon. Minister is that whatever may be the legal position under article 141 and 217, they are all to be referred to the Supreme Court itself for their opinion in order to see the implications of their own judgement. There is a position that the question of appointment of judges is to be restored back to the 1963 position.

17.02 hrs.

(Shri P.H. Pandian *in the Chair*)

Even the opinion of the judges is that the decision taken in the present situation is not good and conducive to the healthy conduct of the judicial system. So, Sir, we have urgently to look into the situation as to how the judges can be appointed, and what are the definite positions regarding articles 141 and 217. This matter has to be addressed by the Law Minister immediately without any delay.

Everybody even my colleague Shri Varkala Radhakrishnan has mentioned about the Conduct of the Courts. We are ashamed that till even today we do not have an exhaustive Contempt of Court Act. You yourself have mentioned in your speech that we can criticise a judgement. We are doing it everyday. But we cannot criticise a judge of his personal character. I do not agree with it. If we see the situation of the judges of Karnataka, as the hon. Member has mentioned, they were found in compromising situation with women lawyers. Is it a part of the judgement? It is a question of character. The retired judge was arrested for bribery and corruption. Is it a part of the judgement? The earlier Lok Sabha was about to impeach a judge, because some carpets were taken away by a judge. Is it a part of the judgement? If we cannot criticise it, if the general public cannot criticise it, what can we do? If a politician or an Executive is corrupt, or if he is otherwise wrong, he can be criticised.

Can we not criticise the judges for their personal character also? I did not want to mention this earlier, but I will do it. Today I was travelling from Cochin to Delhi.

MR. CHAIRMAN : If you allow that to happen, no judge will be safe; no litigant will spare the judge. He will lose the case. ...(*Interruptions*)

SHRI A.C. JOS : You have to have some safeguards for that. I agree with you.

Today I was travelling from Cochin to Delhi. A lawyer from another State was sitting by my side. I got myself introduced and as a lawyer I took interest and asked him. He said that there is no legal battle there, but it is all fixing! ...(*Interruptions*) I was ashamed. As he mentioned, there are certain pro-labour judges and pro-corporate

judges. At least, I can understand that. But if a particular lawyer appears before a particular judge, the outcome can be forecast. But then you say that they cannot be criticised. I know that they are in a very vulnerable situation. So, criticism should be very careful and the judges should also be careful. Day in and day out, newspapers are full of corruption cases of judges, the partiality shown by the judges, prejudices of judgements, etc.

Another thing is that they do not know what their limitations are. In all matters of executive actions, they interfere; they pass orders. ...(*Interruptions*)

SHRIMATI MARGARET ALVA : Tomorrow, they can pass an order saying that he would not be allowed to sit in the Chair!

SHRI A.C. JOS : What can we do? We cannot limit it as it is. We want an independent judiciary; as you yourself said, we want a judicial capital; I agree with you. We, as people, should have some trust in it and faith in it, as also conviction in it. When we approach a judge or a court, there should be some justice done to us. We have to keep them in tact; we have to protect them everywhere. But things are going out of our hands because of their wholesome protection, because of their immunity from anything. They are also going out of hands. The Government should come forward to do something in this regard.

Another thing is this. I am from Kerala, which is thousands of miles away from Delhi. If a client or a litigant has to come for a Supreme Court case, how much money he has to spend and how many days he has to stay here, leave alone the fee for lawyers? So, justice is not given equitably, because a person from Delhi or nearer to Delhi can come and attend the Supreme Court as often as needed. So, it is very expensive for a person from the South. My submission to the Government is this. I am not asking for Benches everywhere. I say that at least the Supreme Court shall have a Bench in Bangalore or in Tamil Nadu. ...(*Interruptions*)

SHRI SURESH KURUP (KOTTAYAM): Bangalore will be an ideal place. ...(*Interruptions*)

Dr.M..V.V.S. MURTHI (VISAKHAPATNAM): We can just mention that there should be a Bench in South India. ...(*Interruptions*)

SHRI A.C. JOS : I can as well ask for a Bench in Trivandrum in Kerala, but I will not do it. ...(*Interruptions*) I only submit that there should be a Bench in South India with original jurisdiction with the right of filing. Otherwise, we are not providing justice to the citizens of India equally.

MR. CHAIRMAN: On two occasions, the issue of establishment of a Bench of the Supreme Court in the South was taken up before the Supreme Court. Do you know what did it say? It said that it would affect the integrity of the Supreme Court, and so, there could not be an establishment of a Bench. Even in the last sitting of the Standing Committee on Home Affairs, we had recommended it. ...(*Interruptions*)

They did not want to split the Supreme Court. That is the view of the whole Court. The full court of the Supreme Court had written to the Government saying that it cannot be split. You can ask the Minister.

SHRI A.C. JOS : The Supreme Court is worried about the integrity of the Supreme Court but we are worried about the integrity of the nation.

MR. CHAIRMAN : The Law Minister will answer about it.

SHRI A.C. JOS : I still have hopes in him.

MR. CHAIRMAN: He can speak only if he is given an opportunity to reply. So, please do not take more time.

SHRIMATI MARGARET ALVA : Maybe, if we have a Law Minister from the South, he will think of having a bench there.

SHRI A.C. JOS : It is very-very difficult for a litigant, for an ordinary citizen, to travel all the way from Trivandrum, Ernakulam, Tamil Nadu or Bangalore to Delhi to argue his case. When he comes here, suppose the Bench says that it is adjourned for tomorrow or it will meet after two weeks, then he has to go and come back again. The situation is very-very difficult.

MR. CHAIRMAN: The hon. Minister will once again take it up with the Supreme Court.

SHRI A.C. JOS : A Bench with original jurisdiction, with filing rights should be established in the Southern part of the country. For keeping up the integrity of the country, I generally support this Bill.

DR. M.V.V.S. MURTHI : Mr. Chairman, Sir, we are today discussing about the Bill No.7 of 2003, amending certain provisions in the Delhi High Court (Amendment) Bill, 2003....(*Interruptions*)

MR. CHAIRMAN: Hon. Minister wants 15 minutes' time to reply.

DR. M.V.V.S. MURTHI : We will give him more time. We would like to give more time to the hon. Minister of Law so that he could consider all the requests made by the hon. Members of the House. We have ventilated a number of our grievances and we will be happy if he takes into consideration all the problems raised by us.

SHRI S. BANGARAPPA : You should make a recommendation for the Judicial Commission....(*Interruptions*)

DR. M.V.V.S. MURTHI : For that purpose only I have chosen to speak on this Bill.

We are always going piece-meal. We are always being told that a comprehensive legislation will come at a later date. I do not see any urgency to bring an amendment Bill only to enhance the pecuniary limits. Instead of this, the Government should have come up with a comprehensive Bill. Sections 25 and 30 of the Punjab Courts Act, 1980 are applicable to the judicial courts of the districts and Delhi High Court Act, 1966, applies to the High Courts. Instead of that there should have been a comprehensive Bill which would have given the latest position so that the things would not be complicated further.

As the hon. Members have pointed out, they will be inserting two clauses in section 4. I do not know how it can be taken care of. Today, going to the High Court only up to Rs. 20 lakh is nothing. If there is a civil litigation on a small piece of land, they should take into consideration various Registration Acts while fixing the limit, as to whether Rs.20 lakh is sufficient or not. At least in the past two years, what was the limit for a piece of land being registered? If there is a dispute about the house plot, where will the person go?

He has to go to the Supreme Court. Kindly take this into consideration so that a practicable and a realistic limit could be fixed while enhancing the limit and the time of the House is not taken by the amendments of this sort. Likewise in the District courts also − today this may not be a relevant thing − even after filing the case how much time is taken to give justice. The number of judges also has to be enhanced. There should not be any backlog beyond three years like in income tax or sales tax. Everywhere there is a limit and within three years if you do not take it up, whatever you have filed, it will become the accepted matter. But in the case of courts, even after 30 years, one could get into these things. The hon. Minister is not only a Minister here but he is a very enlightened advocate also. He knows the practical difficulties. So, he should propose remedial measures for the future before the 13th Lok Sabha is dissolved. He should bring out a comprehensive enactment taking this into consideration so that your name remains in the history, and it would benefit the people also. Kindly take that into consideration.

Sir, Shri Soli Sorabji, the Attorney-General of India and the President, Bar Council of India, Shri D.V. Subbarao have emphasised the urgency of a National Judicial Commission keeping in view the number of scandals that are coming out involving the judges, their corrupt practices, their behavioural aspects and their morality. Everything is affected. I am only mentioning what they have stated. Both of them have given their opinion and it had appeared in the Press. So, these things need to be taken into consideration urgently so that there could be a check on our judicial system. Otherwise, if the morality and judicial system is affected, the whole country will be affected. If it is in any other Department, it would only affect a part of Administration and it could be dissected. But as far as judiciary is concerned, you cannot separate it. Kindly take urgent steps in this regard. Further, it is not the question of only the Supreme Court bench and dispensing justice alone. The justice should be dispensed with speedily. Moreover, it should be available to the ordinary people. In the present scenario, Governments are working for the people's needs and they are going to the houses of the people. Whereas, for the Supreme Court, one has to go to Delhi. How many people could go to Delhi? Only rich people could go there. There is every need that a Supreme Court Bench should be started in the South. It could be anywhere in the South. Let the Supreme Court decide about the location. We are not very much interested in having it in Hyderabad or Bangalore or Trivandrum or Chennai. It should be at a centrally located place which is approachable for everybody. So, please consider that.

MR. CHAIRMAN : Please conclude. The Minister has to answer and we have to take up Half-an-Hour Discussion at 5.30 p.m.

Dr.M.V.V.S. MURTHI : Sir, I will not take much time. There is an observation that the Supreme Court cannot have any Branches. But the High Court is having Branches. Is there a different law for the Supreme Court and the High Court?

Sir, in some States there are two benches of the High Court. In the same way, the Supreme Court could also have its benches in some States. If the Parliament makes a law in this regard, then the Supreme Court would abide by it. The hon. Law Minister should consider this aspect and should not leave it to the Supreme Court to decide as to whether a bench of the Supreme Court is required in some States or not. We, as representatives of the people, know better the problems being faced by the people. Let the Supreme Court dispense justice to people and not decide every other administrative matter. With these words, I support the Bill and I would like to request the hon. Law Minister to take into consideration all these aspects. I would like to request him to take steps in order that the

morality of the Judiciary is retained. This is very important.

SHRI K. MALAISAMY (RAMANATHAPURAM): Mr. Chairman, Sir, the sum and substance of the entire debate is that the Judiciary is getting an upper hand and is encroaching upon the powers of the other limbs of democracy. Is it due to the weakness and spineless nature of Parliament or the Executive?

MR. CHAIRMAN : This is tolerance of the Parliament and the Executive.

Now, Dr. Raghuvansh Prasad Singh, please conclude within two to three minutes. The hon. Minister has to reply to the debate.

डॉ. रघुवंश प्रसाद सिंह (वैशाली) : सभापति महोदय, ज्यूडिशियरी और पार्लियामैंट की सुप्रीमेसी का सवाल बराबर उठता रहता है। पार्लियामैंट के इतिहास में जब एक जज के खिलाफ महाभियोग लगाया गया था, उस समय गुटबंदी और उत्तर दक्षिण की फीलिंग करके जो कसूरवार जज पकड़ा गया था, उस पर कार्रवाई नहीं हुई। उसके लिए इतिहास कभी माफ नहीं करेगा।

"ज्यों नहीं दंड करों खल तोड़ा,

भ्रट होई श्रुति मारग मोरा। "

यानी जो पकड़ा गया, ज्यूडिशियरी की जांच करके जिसको कसूरवार साबित किया गया, उसके खिलाफ पार्लियामैंट में इम्पीचमैंट पास नहीं हो सका, यह कसूर है। इतिहास बताता है कि इस कारण से पार्लियामैंट की सुप्रीमेसी घट गयी, कम हो गयी, जो चिंता की बात है। सब लोग न्याय के लिए न्यायपालिका में जाते हैं। डेमोक्रेसी में तीन खंभे है। अब चौथा खम्भा जर्नलिज्म या मीडिया का आ गया है। मुझे याद है कि किसी जज ने हमें कहा था कि 20 परसेंट जज करप्ट हैं। अब आम जनता मे क्या परसेंटेज होगा, यह भेद मैं नहीं खोलना चाहता। इसी तरह आपने तय किया था कि दिल्ली हाई कोर्ट में पांच लाख रुपये से बढ़ाकर 20 लाख रुपये से आगे के मामले देखे जायेंगे। अब दिल्ली हाई कोर्ट के एक जज ने भय से त्याग-पत्र दे दिया। वे इस समय जेल में हैं। उनकी जमानत भी नहीं हुई। आप तो कानून मंत्री बन गये हैं नहीं तो आप मुकदमा लड़कर उन्हें छुड़ा देते, बेल करा देते। आप कैसे जा पायेंगे ? अभी श्री राम जेठमलानी साहब फ्री हैं इसलिए वे उनका मुकदमा लड़ सकते हैं। â€¦ (व्यवधान) देश में सब लंबित मामलों को देखा जाये तो ढाई करोड़ से ज्यादा मामले होंगे। सबसे ज्यादा जिलों में हैं। जिलों में करीब ढाई-तीन हजार जजों की पोस्ट खाली होंगी। 400-500 पोस्ट हाई कोर्ट के जजों की खाली होंगी। In the Chennai High Court, 229 cases, after hearing on these cases has been completed, are pending for six months for judgement...(*Interruptions*) Not a single case is pending in Bihar...(*Interruptions*) सुप्रीम कोर्ट में सुनवाई के बाद 17 मामले छः महीने से अधिक लंबित हैं।

यानी सुनवाई हुए छः महीने हो गए लेकिन जज को जजमैंट लिखने की फुरसत नहीं है। वैसे 82 ऐसे मामले सुप्रीम कोर्ट में लंबित हैं जिनमें उनको सुनवाई के बाद फैसला देने की फुरसत नहीं है। इसी तरह मद्रास हाई कोर्ट पहला ऐसा हाई कोर्ट है जहां 229 केसेस में जजमैंट बाकी है। दूसरे नम्बर पर कोलकाता है जहां चार महीनों से 17 केसेस पैंडिंग रखे हुए हैं। यह बहुत आश्चर्य की बात है कि केसेस की सुनवाई हो गई लेकिन फैसला नहीं लिखवाया गया। अगर जज साहब रिटायर हो गए तो फिर से सुनवाई होगी। इस तरह लोगों को कैसे न्याय मिलेगा और कैसे सुधार होगा।

ज्यूडीशियल रिफार्म्स की बड़ी भारी चर्चा है कि ज्यूडीशियल रिफार्म्स होना चाहिए। हम नहीं जानते कि नेशनल ज्यूडीशियल कमीशन कब बनेगा। कहीं न कहीं बयान होता है, नेशनल ज्यूडीशियल कमीशन, ज्यूडीशियल रिफार्म्स. कानून मंत्री क्या करने जा रहे हैं, यह बताएं। दिल्ली हाई कोर्ट में कई जजों के विरुद्ध सैक्स तथा और कई तरह के मामले भी हैं।â€¦ (व्यवधान)

MR. CHAIRMAN : Please conclude. The Minister has to give reply.

SHRI E.M. SUDARSANA NATCHIAPPAN : He can give reply tomorrow because we rarely get a chance to speak on the judiciary.

MR. CHAIRMAN: Except on a substantive motion, you cannot discuss this matter. Actually, we have now deviated from that principle.

SHRI E.M. SUDARSANA NATCHIAPPAN : But we are only speaking on the Bill.

डॉ. रघुवंश प्रसाद सिंह : दिल्ली हाई कोर्ट में एक लाख अठहत्तर हजार टाइम बार्ड मामले लंबित है। ये अब पांच लाख से बीस लाख रुपये का प्रावधान करने जा रहे हैं। इस तरह उनके पास मामले और बढ़ जाएंगे। ये क्या तय करेंगे, गरीब आदमी को न्याय कैसे मिलेगा, मंत्री जी यह सब बताएं। नेशनल ज्यूडीशियल कमीशन, शैडयूल्ड कास्ट्स, शैडयूल्ड ट्राईब्स, वूमैन के बारे में क्या होगा, कैसे होगा, यह सब बताएं, तब हम इसका समर्थन कर सकते हैं।

SHRI E.M. SUDARSANA NATCHIAPPAN : Sir, I may be given just two minutes to speak on the Bill.

MR. CHAIRMAN: Please cooperate with the Chair. The Minister has to reply. Only two-three minutes are left before the Half-an-Hour Discussion is taken up. He is going to give a Bench of the Supreme Court in Tamil Nadu!

SHRI E.M. SUDARSANA NATCHIAPPAN: I am going to make some important submissions, Sir. How can you know what I am going to speak?

MR. CHAIRMAN: But only two-three minutes are left.

SHRIMATI MARGARET ALVA : You can ask the House to give ten more minutes for passing of this Bill before Half-an-Hour Discussion is taken up. You can do it with the consensus of the House.

MR. CHAIRMAN: In that case, as soon as Shri Natchiappan finishes his speech, the Minister can give the reply.

SHRI E.M. SUDARSANA NATCHIAPPAN (SIVAGANGA): Mr. Chairman Sir, We are happy that the pecuniary jurisdiction is increased. But this kind of increase should have the focus at least for ten years taking into consideration the cost of the land, the cost of the asset or the cost of the value of the property and other things. On that basis, it can be increased to Rs.50 lakh or Rs.1 crore.

At the same time, the lower judiciary is more burdened because now all the cases will be transferred to it. We know that by the direction of the Supreme Court, the Delhi High Court has formulated the civil rules of practice and the criminal rules of practice very lately. That is one of the reasons for the delay in criminal and civil proceedings.

In the same way, the issue of appointment of judges is very important. There are plenty of vacancies and proper representation to all the groups is not given throughout India. I have the information from reliable persons that only twelve lady members are appointed as High Court judges. Women are not properly represented in the judiciary.

SHRIMATI MARGARET ALVA : Mr. Minister, you may please note that only twelve woman judges are there in High Courts in the entire country.

SHRI E.M. SUDARSANA NATCHIAPPAN : In the same way, OBC, SC and ST representation also should be there.

These things should be considered.

In the same way, the subordinate judiciary is burdened with a lot of work. We know that Chief Justice of the Madras High Court has given a direction to the Government of Tamil Nadu to fill up the vacancies in the subordinate judiciary. But the Government wants to say that they do not have money to face this situation. These type of things are coming up. Simply by getting a letter from the Home Ministry....(*Interruptions*)

MR. CHAIRMAN : You leave that. This is not with that background. Mr. Minister, a representation was given by the Registrar to the Government and the Registrar's letter was treated as a writ petition by the Chief Justice.

SHRI E.M. SUDARSANA NATCHIAPPAN : That is what I am telling. Simply that letter is taken as a writ petition.

MR. CHAIRMAN: It cannot be treated like that. It is an administrative letter.

...(*Interruptions*)

SHRIMATI MARGARET ALVA : Sir, how can you answer to a debate?

MR. CHAIRMAN: I do not want to expunge it.

SHRI E.M. SUDARSANA NATCHIAPPAN : Sir, I am also speaking in the same spirit. Simply the letter is treated as a writ petitionâ€¦(*Interruptions*)

MR. CHAIRMAN: Now, I want to take the sense of the House. Shall we extend the time of the House for about 20 minutes more? Let the hon. Member complete and then the Minister will answer. I want to take the sense of the House.

SEVERAL HON. MEMBERS: Yes.

MR. CHAIRMAN: Till the subject is over, I extend the time of the House.

SHRI E.M. SUDARSANA NATCHIAPPAN : Therefore, the executive burden of paying the salary should also be considered. Regarding the lawyers, the Legal Services Authority Bill is made but the entire Indian Bar Association had gone on strike and the hon. Law Minister, at that time, as Shrimati Alva was saying, "different Avtar" had also participated as a lawyer and found out some solution. At the same time, the lawyers who are at the grass-roots are afraid that their opportunity to practise is totally in a perilous position. Therefore, this point should be answered.

I am asking this for the cause of lawyers only. At the same time, the legal services authority should be presided over by the practising lawyer. A lawyer should be made as judge for legal services authority and one of the members should also be from the bar, that is, the lawyers. Only then any two-member judgement will be binding. That is the law we have made. Therefore, lawyers should be allowed for it.

Finally, nowadays, a lot of tribunals have begun to be made functional by our enactment. But they are not paying any court fee. The rich people are enjoying without paying any court fee and through the tribunal, they are getting the verdict. But the poor people are asked to pay the court fee but the judiciary is delaying every proceeding. Therefore, poor people should also be free from court fee and should be allowed to have verdict under article 39 (a)

which was brought under the 20-Point Programme by Shrimati Indira Gandhi. Ordinary people should have free justice throughout India, especially at the starting of the judiciary level.

I would conclude by saying that the legal services authority system is started in every district of Tamil Nadu. The present Chief Justice, Justice Subash Reddy and Justice Sirpurkar are implementing it. We are giving money under MPLAD Scheme and it is very successful throughout Tamil Nadu. At the same time, if lawyers problem is also solved, the legal services authority will help them a lot. Arbitration should also be brought into practice. Even a Supreme Court judge has commented that arbitration is now a costly one and that should also be considered by a proper amendment to the Arbitration Act....(*Interruptions*)

SHRI ARUN JAITLEY: Mr. Chairman, Sir, even though the Bill relates to a very smaller issue, that is an amendment to the Delhi High Court Act, it has triggered and sparked off a lively debate and the debate has extended to several facets of the state of the Indian Judiciary. As far as the Bill is concerned, some questions have been raised. Let me first deal with them.

रघुवंश बाबू ने सबसे पहला प्रश्न उठाया था कि आप पांच लाख से 20 लाख तक हाई कोर्ट की ज्यूरिस्डिक्शन बढ़ा रहे हैं - पांच लाख से 20 लाख तक हाई कोर्ट की ज्यूरिडिक्शन नहीं बढ़ा रहे, पांच लाख से अधिक जहां मूल्य होता है, वे मुकदमें हाई कोर्ट में जाते हैं। हाई कोर्ट में 27-28 जजेज होते हैं और डिस्ट्रिक्ट कोर्ट तथा एडीशनल डिस्ट्रिक्ट कोर्ट में 100-125 जजेज होते हैं। आपने कहा कि हाई कोर्ट में 1,78,000 मुकदमें पेंडिंग हैं और डिस्ट्रिक्ट कोर्ट में 18,000 मुकदमें हैं। इसलिए जो पांच लाख से ऊपर के मुकदमें हाई कोर्ट में जाते हैं, इस संशोधन के बाद केवल 20 लाख से ऊपर के ही हाई कोर्ट में जाएंगे। इससे कम वाले डिस्ट्रिक्ट कोर्ट, एडीशनल डिस्ट्रिक्ट कोर्ट या निचली अदालतों में जाएंगे। जिसकी वजह से हाई कोर्ट में इन मुकदमों के निपटान में लगभग दस वर्ा लगते थे, वह समय कम लगेगा और इससे लोगों को शीघ्र न्याय मिल सकता है।

The second question which Shri A.C. Jos had raised was procedural. He wanted to know as to what happens to section 4, as to how section 4 fits into the structure and body of the parent legislation of 1966. Section 4, in fact, says that the effect of this is the jurisdiction of the High Court is being raised to Rs. 20 lakh and, therefore, a large number of original suits pending before the Delhi High Court will have to be transferred as a result of this amending Act to the lower court. In accordance with the drafting procedures − I have seen the past practice also − section 4 is the transferring section which enables the Chief Justice to transfer. Transfer of cases is an one-time act. Therefore, section 4 is section 4 of the amending Act. Subsequent to the transfer taking place, section 4 will lose its relevance because nothing remains to be transferred. Thereafter, subsequently section 4 is taken away by a repeal Act.

SHRI A.C. JOS : At least for the time being, two section 4s will be hanging there.

SHRI ARUN JAITLEY: Two section 4s won't exist. One is section 4 of the amending Act and the other is section 4 of the past Act. Wherever such jurisdiction has been raised, we have checked up the precedent, it is a settled legislative practice which we always follow, which is the drafting practice itself.

In regard to some of the larger issues which have been raised, I must, first of all compliment Shrimati Margaret Alva for using this as an opportunity to trigger off a debate which has been of interest to the entire country in the last few days. I do not see it merely − indeed we should not see it merely − as an incident where the legislature is reacting to certain events which have taken place. But we see this as an issue of concern arising out of several issues which are of contemporary in nature.

We are all concerned with the speed and quality of justice. We are concerned with the accountability of the judicial institution. We are also concerned with what we perceive somewhat as obliteration of the separation of powers. Separation of powers is one of the essential fundamental features of our Constitutional functioning. The Executive has its own jurisdiction; the legislature has its own sovereign domain; and the adjudication powers and the powers to interpret the law and the Constitution are with the Supreme Court.

When the whole institution of judicial activism was propagated 25 years ago, one of the positive aspects was that in cases where the Executive is not acting, there must be some check on the Executive and direct the Executive to act as per the law and the court, as an activist court, would pass directions. Therefore, the society came to accept this. Activism extended its features because it is an unchartered course and it is an undefined course. Activism and restraint have always to be two sides of the same coin. Both have to co-exist. When they cease to co-exist, and you find that what essentially an Executive domain and a policy domain is being usurped in the name of activism, then consequences of it are felt all over the country. Some of the illustrations which the hon. Members have given is in relation to this. But we must remember that this is not an issue of what suits us on what occasion. We must continue this debate and it is a debate where we need an extent of legislative vision.

We also need judicial statesmanship to realise as to where the dividing line in the separation of powers is to be because once the dividing line is lost, then, you result in a confrontationist situation which weakens the basic democratic edifice and that is something which we really have to avoid. What is of deeper concern is when even Legislative authority is, to some extent, interfered with.

We have been discussing the CVC Bill. The CVC Bill is an example. In the CVC matter, the judgement of the

Supreme Court was an excellent idea. But to make the CVC a statutory agency, the issue whether it must be by the Executive act or the Legislative Act is wholly within the purview of this House. Can there be a judicial direction to this House to make a statutory exercise which, in effect, is a mandamus to the House to legislate? What would happen when the House gets up and says that it does not legislate? I know there is some alternative opinion which has been expressed in various sections of the House. I am again not questioning the desirability of the recent judgement relating to the prerequisites at the time of contesting elections. But there are several questions which are thrown up. Which is the final arbiter to decide what are the pre-qualifications for contesting an election? Is it the Legislature or is it a Judicial mandate? What should be the requirements at the time of contesting an election? Is it the House to decide or is it the judicial institution to decide? Is it the Legislature to decide or the Judiciary to decide it? If the Judiciary's power is taken away in the name of right to information, then I ask myself a question. Does the right to information relate only to knowing my and my family's assets? Why does the right to information not extend to the other four organs which Dr. Raghuvansh Prasad Singh was referring to? अगर चार खम्भे हैं तो उन चार खम्भों में कार्यपालिका भी है, न्यायपालिका और मीडिया भी है, तो क्या सूचना का अधिकार केवल राजनैतिक कार्यकर्ताओं के प्रति है, अन्य लोगों के प्रति वह सूचना का अधिकार एग्जिस्ट नहीं करता है। यह प्रश्न जो इसमें से उठता है, इसका अभिप्रायः यह है कि एक बार जब इस प्रकार के निर्णय आते हैं और लैजिस्लेचर उन्हें स्वीकार करता है, then today, for some reason, you may accept it. I do not mind if in this Session or in the next Session, you keep an exclusive debate on this issue. When history is written, a question would be asked like this: "When an abdication of legislative jurisdiction was taken away, at that time you were Members of the House and what did you do?" Twenty or thirty years later, this question is going to be put to each one of us who is a Member of this House or the other House today....(*Interruptions*) Therefore, this is a serious concern. I join and appreciate the concern of the House that this is a concern which we must all share.

The second question which arises in this context is about judicial appointments. Every Member has said about this while speaking. The hon. Chairman himself has read out the provision of the Constitution. The point is that the appointment of Judges will be made by the President, that is, the Government, in consultation with the Chief Justice and such other Judges as you consider necessary. The appointment is to be made by the Government. In the first twenty years, what happened? Let us just look back and see what happened in this regard in the first twenty years. In the first twenty years, the Judiciary recommended it; the Government expressed its opinion and, after consultation between the judicial institution and the Executive, the judicial appointments were made. There was never a confrontation. You had some of the best quality appointments made during that period.

श्री रामदास आठवले (पंढरपुर) :उसमें रिजर्वेशन भी होना चाहिए।

SHRI ARUN JAITLEY: Then came the debate in the early 70s. I am glad that today that debate is no longer alive. The question is this:s Should the Judges have a social philosophy or a political philosophy? That debate was carried on. Finally, that debate came to an end. The larger consensus in this country is that we need a detached Judiciary. We need an independent and a strong Judiciary. 1982 was a turning point. In 1982, the court said that the eventual power of making judicial appointments is with the Executive but on the recommendation of the Court. But the last word was of the Executive.

If we look back post-1982, till 1993 we had three separate Governments. So, I am not holding one or the other responsible. When the last word went to the Executive and three separate political parties ruled this country for smaller or larger periods, the character of recommendations was almost in consonance with the character of the Government in power. There was one suggestion made during that period and that was: was some element, if not a very large element, of political influence in appointments now creeping in? In 1993, the court interpreted the word 'consultation' in the Constitution and said: "the word must be interpreted in the context in which it is used". Consultation normally means advisory consultation, but because this is consultation for the purposes of appointment of judges, advice given by the court, advice given by the Chief Justice to the Government must be considered as binding. So, when a Chief Justice gives advice, the Government is bound by it. In 1998, that power of the Chief Justice became the power of the collegium. Where do we stand today?

Sir, I will just make four statements. Today, advices are given by the collegiums in the High Court and by the Supreme Court. There are some nominal views of the Chief Minister and the Government which are taken into consideration, but finally the say or the advice of the court is a binding consultation. The effective power to recommend names is with the court as an institution. The accountability is of the elected Government and people ask: "what kind of persons have you appointed?" But the Government of the day, after giving its advice, finally has to do the ministerial job of only notifying the appointments. The binding advice is given by the court.

Sir, this leads us to another question. If I look back at the present system and compare it with the earlier one, perhaps, in the present system the element of political influence is much lesser. That is a credit to the system, but the process is much slower. If one were to ask as to whether the quality of appointment has improved over pre-1993, I cannot convince myself to say to that. The mechanism itself has absolutely no accountability in it, because the whole process is, some advice is given by the collegium and the Government has to act, after consultations with the court, as per the advice.

There is a second question which also arises here. What happens when complaints of misdemeanours come up? When complaints of misdemeanours come up, impeachment is a near impossible procedure, as we have witnessed in the early 1990s. There is no transparent mechanism to deal with it and in the absence of any transparent mechanism to deal with it, a debate has taken place in which it was said that we require an independent Judiciary. Does accountability in any way interfere with that judicial independence? If it was accountability to the Executive, perhaps, it would be interference with the independence of the Judiciary. But if the accountability is to an in-house mechanism, the normal argument in favour of giving power only to the Judiciary is that the Judiciary must have an in-house mechanism and this accountability must be to that in-house mechanism of the Judiciary. But experience has shown, and the experience of the last 10 years categorically is, that in-house mechanisms have not functioned effectively. Now, on account of some cases which have come to surface, somebody has had to resign in some court or the other. There was a resignation in Rajasthan and there was a resignation in Delhi. But the facts never came to light on account of these in-house mechanisms. The facts came to light only because some investigative agency or some wing of the Executive was investigating somebody else and they found a judge sitting in the middle. So, it was purely by coincidence that investigative wings hit upon some convincing evidence and therefore it was not the in-house mechanism which has been able to really discover this. In such a situation, what do we do about accountability?

Sir, I said this in the other House on Friday in a similar discussion and I take the liberty of repeating it here. When we are in political activity, we are normally at the receiving end of a lot of criticism on several questions. But let us introspect on our accountability standards despite this criticism.

Today, as a Minister in the Government, if I pass an order in the file, I nervously pick up the newspapers as how the public comment on my order has been. When I go to my party, I have accountability because my party asks me questions about every decision I take. This House, through Questions, through Resolutions, through debates grills me and every now and then when we have to face elections, we have to answer the people, even though, the general perception is that the politicians are held to be unaccountable. Each one of us, to our constituents, to our party, to the Parliament, to the media are almost accountable by every minute.

At times, I ask those other four limbs that Shri Raghuvansh Prasad Singh spoke about, compare these accountability standards with what accountability each one of the others has. I say this, not to say that we are any better off. We are all humans, we are not born perfect, each one of us may have weaknesses, we may have fault lines in our characters. Responsibility of office can mature us. Accountability can make us more cautious.

On the contrary, when you deal with the judicial institution, maturity on account of office, responsibility because of office, there are a large number of judges, hundreds and hundreds of them, who lay down exemplary standards, by conducting themselves outside and in court. They lay down the best standards, they can be almost considered role models, but then they are small in number, in a minority. There is constitutional immunity. There is absence of accountability and therefore, the office, instead of maturing you, can actually make you more brazen.

Some of these cases, which are now in the area of public debate across the country, perhaps are a result of this. Therefore, we, as the legislative institution, the media, the entire society, the judiciary itself, has to actually realise this when the percentage of those who are falling in terms of their own ethical yardsticks is increasing. Do we then raise our accountability norms in order to make sure that this fall rate actually comes down, even if it cannot be absolutely checked?

Now, this debate has been on. How do we improve upon polity? The eventual answer is, we have tried a system where the Executive had the last say. When the Executive had the last say, we saw a debate where people spoke of social and political philosophy of judges. We saw a situation where people were superseded. We witnessed the situation where people were transferred. We saw a situation where there was an element of politics getting into the process of appointment.

When the Judiciary had the last word, we witnessed that not all of these problems are gone and the accountability measures have not been raised. As a result of which aberrations have increased. Therefore, what is the eventual answer that we are looking for?

These two systems were not perfect. They have not served us well. Therefore, as a dynamic democracy, do we think of some further step? One step which has been suggested by a large number of jurists, by a lot of former judges, by a large number of political parties − in fact, when I went through the manifestos and agendas of a large number of political parties, one of the items on which, if there is no unanimity, at least a broad convergence − was let there be a National Judicial Commission.

The National Judicial Commission deals with appointments. The National Judicial Commission deals with, not removal, complaints of deviant behaviour which do not require a removal. The National Judicial Commission's composition must not be lopsided. It must not speak of primacy of one institution over the other institution. But it

must be such that it is finally aimed to give us the best quality of judgements and the best yardsticks of accountability. Therefore, one of the great advantages of National Judicial Commission is, if baseless allegations are made against a judge, and judges can also be subjected to baseless allegations, and a clout is created over him, then a body with such credibility when it exonerates him, it adds to the credibility of a judge.

So, accountability is being strengthened. It is actually going to strengthen the quality of justice and the dignity of the judicial institution as also their independence. There is no basic fundamental conflict between the two. The Government has been committed to this. I am extremely grateful to the hon. Members for having made several suggestions. ...(*Interruptions*)

SHRI A.C. JOS (TRICHUR): What about a conflict between article 217 and article 141? ...(*Interruptions*)

SHRI ARUN JAITLEY: Shri Jos, it is in my mind.

The Government has been committed to this and the Government, therefore, is seriously seized. When I say 'seriously seized', it is at a very advanced stage. It may be a matter of days before the Government formulates its final opinion on the subject and comes before this House. I can also assure this House that on what the composition will be, the Government will give its opinion in its wisdom. This is a very sensitive matter which has to go even eventually to the Standing Committee. It is a matter on which we are prepared to have a larger discussion and accommodate various viewpoints.

There were several other issues which have been raised. One of the issues which was raised was, is there a conflict between article 217 and article 141? Sir, I do not think that there is an issue of article 141 because article 141 says that the law declared by the Supreme Court will be binding on all Courts. That shows the width of jurisdiction and enforceability of the Supreme Court's decisions. The effect of article 141 is that even an erroneous decision of the Court will be binding on everybody. That is the effect of article 141. Article 217 spoke in terms of appointments. And on appointments if the Supreme Court had given one interpretation in 1982, that interpretation was enforceable under article 141. If it gave a completely contrary interpretation in 1993, that is also enforceable under article 141.

Article 141 is intended to actually have the effect of preserving a rule of law and law being what the Supreme Court eventually declares the law to be. You have rightly said that the Supreme Court may not be infallible but the Supreme Court is final. Therefore, in a society governed by a rule of law, we have to accept even incorrect judgements hoping fully well that the wisdom of future generation some day will correct those errors. It had happened many a time in the past.

There were several such issues which were raised. I will refer to only two of them and complete. One was about the Contempt of Courts Act, which was raised by several Members. The Government has already taken a decision to amend the Contempt of Courts Act. The decision has been taken by the Cabinet. The decision is being introduced before this House. This House will get an opportunity to loosen the rigours of the Contempt of Courts Act. One of the amendments that we have proposed is that whereas truth was a permissible defence in libel and defamation, truth was not a permissible defence in contempt. This somehow seems an issue of great concern which has been raised by several jurists. The Commission headed by Justice Venkatachelliah also suggested that this required to be changed, this view is anachronic. The media had a strong opinion on this. Therefore, the Government has taken in principle a decision in the Cabinet. We will be introducing that Bill before this House. ...(*Interruptions*)

I will take up the last two matters. Due to constraint of time, I am not taking other small matters. With regard to the matter - National Legal Services Authority Act − which was raised, there is no bar against lawyers appearing before *Lok Adalats*. When Dr. Raghvansh Babu spoke, he spoke about the cost of the justice. Several Members spoke about that. What is the amendment? It is one of the most salutary laws that this Parliament has passed. Lawyers are not debarred from appearing in this but instead of taking every dispute to court, those who want to litigate, those who want to file appeals after appeals, spend lakhs of rupees and spend 10 years in court, can go to a civil court, they can go to a writ court but against public authorities and governmental bodies, there will be *Lok Adalats* located therein. You have a facility of going there through your lawyer, having a conciliation or having an adjudication before that Authority. It is only an alternative route which has been given. It does not bar any other route.

18.00 hrs.

It does not bar any other route which have been given to you. It is an additional facility given to the litigant.

As far as the last question with regard to the setting up of the Bench in the South is concerned, let me just deal with it in two-three minutes. Article 130 of the Constitution clearly mandates that the Supreme Court would sit at Delhi and at such other places which the Supreme Court would decide. In this matter, the view of the Central Government

and the view of this Parliament, as conveyed through the Report of the Standing Committee, has very clearly been that we need Benches of the Supreme Court outside Delhi. There are two areas where a Bench is eminently needed. One is the South and the other is the North-East. As far as the North-East is concerned, for all reasons you have given and particularly for reasons of distance and economy, the position of the North-East is precarious. Besides that it sends out a very powerful signal to have a Bench of the Supreme Court. If not a Regular Bench, even a Circuit Bench would do because the quantum of cases is not much. We have been regularly requesting the Supreme Court but unfortunately this view has not found favour with the Supreme Court. Therefore, the matter stands at that. The issue was really out of a relatively more innocuous amendment increasing the jurisdiction of the subordinate courts in Delhi but again I am very grateful to Shrimati Margaret Alva and other hon. Members who have triggered off a larger debate on the subject.

With regard to the appointment of women, Scheduled Castes and weaker sections as Judges, I have to admit that it is a legitimate issue. We have been repeatedly requesting the Chief Justices of High Courts. In fact, in every letter I have sent to the Chief Justices of High Courts, the last paragraph reaffirms that we request them to take a special endeavour to see that Scheduled Castes, weaker sections, backward classes as also women get adequate representation as far as the Judiciary is concerned. It is our endeavour to increase this quantum of appointment. I am sure, one day, we would see that the National Judicial Commission would be a more effective forum for the Government to sit in and express that view.

MR. CHAIRMAN : Now, the House will take up the motion for consideration.

...(*Interruptions*)

श्री चन्द्रनाथ सिंह : सभापति महोदय, विधि मंत्री ने कई प्रश्नों के जवाब दिये हैं, लेकिन मेरे एक भी प्रश्न का जवाब नही दिया, मैं जानना चाहता हूं कि पहले हाई कोर्ट पांच लाख से ऊपर के केसिज देखती थी और अब बीस लाख से ऊपर के केसिज देखेगी, बीस लाख से नीचे के केसिज लोअर कोर्ट पर ज्यादा असर डालेंगे। लोअर कोर्ट इतने सारे केसिज का निपटारा कैसे करेगी। â€¦ (व्यवधान)

MR. CHAIRMAN: The question is:

"That the Bill further to amend the Delhi High Court Act, 1966, be taken into consideration."

The motion was adopted.

...(Interruptions)

MR. CHAIRMAN: Let us nowtake up clause by clause consideration of the Bill.

The question is:

"That clauses 2 to 4 stand part of the Bill."

The motion was adopted.

Clauses 2 to 4 were added to the Bill.

Clause 1, the Enacting Formula and the long Title were added to the Bill.

MR. CHAIRMAN: The Minister may nowmove that the Bill be passed.

SHRI ARUN JAITLEY: Sir, I beg to move:

"That the Bill be passed."

MR. CHAIRMAN: The question is:

"That the Bill be passed."

The motion was adopted.

MR. CHAIRMAN: Now, the House will take up the Half-an-Hour Discussion to be raised by Shri Kirit Somaiya.

श्री किरीट सोमैया (मुम्बई उत्तर पूर्व) : माननीय सभापति महोदय, इससे पहले कि इल्लीगल इमीग्रेशन के ऊपर आधे घंटे की चर्चा प्रारम्भ करूं, मैं माननीय मंत्री जी से जानना चाहूंगाâ€¦ (व्यवधान)

श्री चन्द्रनाथ सिंह (मछलीशहर) : सभापति महोदय, कोरम पूरा नहीं है,â€¦ (व्यवधान) कृपया मैम्बर्स को गिनवा लीजिए, यहां 48 सदस्य हैं। â€¦ (व्यवधान)

SHRI A.C. JOS (TRICHUR): I am on a point of order. There is no quorum in the House.

MR. CHAIRMAN : The bell is being rung---

MR. CHAIRMAN : Since there is no quorum in the House, the House stands adjourned to meet again at 11 a.m. on 6th May, 2003.

18.14 hrs.

The Lok Sabha then adjourned till Eleven of the Clock

on Tuesday, May 6, 2003/Vaisakha 16, 1925 (Saka).